

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

CLARA VARGAS,

Plaintiff,

v.

**UNITED STATES ATTORNEY'S
OFFICE,**

Defendant.

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EP-14-CV-23-KC-RFC

**ORDER ADOPTING THE REPORT AND RECOMMENDATION OF THE
MAGISTRATE JUDGE**

In a pro se complaint (the “Complaint”), ECF No.¹ 3, filed in the above-captioned case (the “Case”), Plaintiff raises various tort claims against the Honorable United States District Judge Frank Montalvo, and seeks to vacate an order and final judgment entered by Judge Montalvo in a prior case. *See* Compl. 1-2. *See also* 3:13-cv-393-FM, ECF No. 3 (the challenged Memorandum Opinion and Order entered by Judge Montalvo). Because Plaintiff appears in forma pauperis, the Court referred the Case to the Honorable United States Magistrate Judge Robert F. Castañeda. Judge Castañeda granted Plaintiff’s motion to proceed in forma pauperis. *See* ECF No. 2. Judge Castañeda then duly prepared a report and recommendation (the “Report and Recommendation”), ECF No. 6, which recommends that the Court dismiss the Case on the basis that the Complaint is frivolous and fails to state a claim, as well as on the basis that Judge Montalvo is subject to absolute judicial immunity for actions performed in his official capacity. Report and Recommendation 1-6. *See also* 28 U.S.C. § 1915(e)(2) (providing that, when a plaintiff appears in forma pauperis, “the court shall dismiss the case at any time if the court

¹ Unless otherwise indicated, “ECF No.” refers to the corresponding docket entry in the above-captioned case.

determines that . . . the action . . . (i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief”). The Report and Recommendation, in accordance with 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b)(2)-(3), informed Plaintiff that she had fourteen days from the date of service to file written objections to the Report and Recommendation in order to obtain de novo review of the issues covered therein. *See* Report and Recommendation 6. *See also* 28 U.S.C. § 636(b)(1) (“Within fourteen days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.”); Fed. R. Civ. P. 72(b)(2)-(3) (“Within 14 days after being served with a copy of the recommended disposition, a party may serve and file specific written objections to the proposed findings and recommendations . . . The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to.”).

The clerk’s office sent Plaintiff a copy of the Report and Recommendation via certified mail on February 7, 2014. *See* ECF No. 7. Plaintiff received the Report and Recommendation on February 11, 2014. *See* ECF No. 10 (dated certified mail receipt). Plaintiff did not file an objection to the Report and Recommendation within the fourteen day timeframe. Although Plaintiff filed several motions after service of the Report and Recommendation, these motions, even construed liberally, do not challenge or even mention any of the factual findings and legal conclusions in the Report and Recommendation; they merely restate the relief requested in the Complaint. *See* ECF No. 8 (requesting that the Court vacate the judgment entered by Judge Montalvo); ECF No. 11 (requesting a finding of liability against Judge Montalvo). Because

Plaintiff failed to timely file an objection to the Report and Recommendation, the Court reviews the Report and Recommendation under the deferential “clearly erroneous, abuse of discretion and contrary to law” standard, rather than the more searching de novo standard. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989); *Rodriguez v. Bowen*, 857 F.2d 275, 276-77 (5th Cir. 1988).

The Court has reviewed the Report and Recommendation and all applicable law. The Court concludes that the Report and Recommendation is not clearly erroneous, contrary to law, or an abuse of discretion.

It is therefore **ORDERED** that the Court **ADOPTS** the Report and Recommendation, ECF No. 6, in its entirety. The Court hereby **DISMISSES** the Case. The clerk shall close the Case. A final judgment shall issue separately.

IT IS FURTHER ORDERED that all pending motions in the Case are **DENIED** as **MOOT**.

SO ORDERED.

SIGNED this 26th day of February, 2014.


KATHLEEN CARDONE
UNITED STATES DISTRICT JUDGE